

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

75-1114

To be argued by
HARRY BLUM

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P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

x

UNITED STATES OF AMERICA,

Appellee,

-against-

GARY SINGLETON, WILLIAM M. KIRBY,
and WILLIAM ELMORE,

Docket No. 75-1114

Appellants.

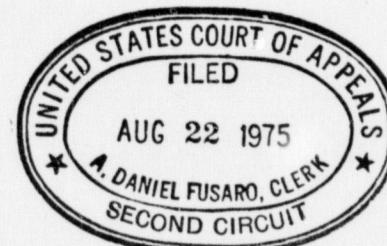
x

APPENDIX FOR APPELLANT
WILLIAM M. KIRBY

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT
OF NEW YORK

HARRY BLUM
130 Clinton Street
Brooklyn, New York

Attorney for Appellant
William M. Kirby



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APPENDIX A

2 Mr. Appelby: Would you please look at Government 1A, 1B
3 and 1C. Mr. Attmore.

4 The Court: No, you're not doing it right.
5 Wait a minute, Mr. Attmore. You went to Mr.
Sheerin's office right?

The Witness: Yes.

The Court: On that day was there a Mr. O'Neil there?

The Witness: Yes he was?

The Court: And what did he say to you?

10 The Witness: He said he wanted me to try and make a positive identification of the people who were supposed to have--

The Court: Now than he showed you those photographs?

The Witness: Yes

The Court: And what did he say to you?

The Witness: He asked would I try and point them out?

16 The Court: Did he point out anyone? Did he put his finger
on anyone?

17 The Witness: No, your honor

18 The Count: We just said pick out?

19 *The white man's burden* to be it

20 [View Article Online](#)

21 www.ijerph.com <http://dx.doi.org/10.3390/ijerph16094500>

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25 The Witness: No Sir. He said try to point them out if you

1 The Court: If they're in there?

2 The Witness: Yes.

3 The Court: He put them down all at once?

4 The Witness: He put the spread down.

5 The Court: Did you look at them carefully, all of them?

6 The Witness: Yes I did.

7 The Court: How long did it take you before you made---
8 picked out anyone?

9 The Witness: Approximately 15 seconds.

10 The Court: Approximately 15 seconds, then you began to
pick out one or two, is that right?

11 The Witness: Yes, your Honor.

12 The Court: All right, you go ahead.

13 BY MR. APPELBY

14 Q. When you pointed out these photographs, Mr.
15 Attmore, did you do anything after you pointed them out?

16 The Court: The one's you picked out, how many did you
pick out?

17 The Witness: I picked out two.

18 The Court: All right on those two did you put your initials
19 on the back of them?

20 The Witness: Yes I did.

21 The Court: All right. Now, let him pick out the two again
without looking.

22 Q. Would you point out the photographs that you
23 pointed out on June 25th? Incidentally, Mr. Attmore, would
24 you please arrange the photographs exactly as they appeared
to you on June 25th 1974? How did they appear before you?

25 A. They were---

26 The Court: I see in three series side by side.

27

28

1 The Witness: It was spread out in this manner.

2 Q. In a line?

3 The Court: Does six on ten look like ten on the other, does it?

4 The Witness: There is four ten on this one, six on the
5 other, on six on this one. (SIC)

6 The Court: Six on each side and ten in the middle, right?

7 The Witness: Yes your Honor.

8 The Court: So, all right. Twenty-two photographs there
right?

9 The Witness: Yes, your Honor.

10 The Court: And out of those you picked out two, right?

11 The Witness: I picked out two.

12 The Court: Can you pick two out today?

13 The Witness: Yes, your Honor.

14 The Court: Well, pick them out.

15 The Witness: This one.

16 The Court: See if you have an initial on that.

17 The Witness: Yes, your Honor.

18 The Court: You've got the initialling in front, I see. So you
19 already had your initials on so you didn't pick them out today.
Is that your initial?

20 The Witness: Yes, your Honor, that's it.

21 Q. What number is that, Mr. Attmore?

22 A. Eighteen

23 Q. Did you pick out anybody else?

24 A. Yes.

25 The Court: Now when you picked them out there was no initialling
26 on there, nothing on there?

27 The Witness: No, your Honor.

28 The Court: What's the other number you picked out?

1 THE WITNESS: I picked out number six.

2 THE COURT: When you picked them out, were you asked to put
3 your initials on them at the time?

4 THE WITNESS: Yes, your Honor.

5 THE COURT: And their initials are on there?

6 THE WITNESS: Yes, your Honor.

7 MR. APPLERY: Your Honor, I move the Government 1A, 1B, and 1C
in evidence.

8 THE COURT: Wait a minute. Are those men here today? Do
9 you see them?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: Which one did you pick out first? Which is the
first one?

12 THE WITNESS: Am I allowed to point?

13 THE COURT: Yes, sir, which is number six, what's his name
on number six?

14 THE WITNESS: The names I don't know.

15 THE COURT: Well, point out number six. Sit down Mr. Clerk.
16 These men are--

17 THE WITNESS: Am I allowed to stand up?

18 THE COURT: You can stand up. They can stand up too.

19 MR. KEELY: Doesn't he come over and place his hands--

20 THE COURT: No, I don't think he wants to do that. You
can stand up.

21 THE WITNESS: Thank You. If you don't mind the young man
in the colorful coat.

22 THE COURT: The colorful one, do you mean the purple?

23 THE WITNESS: With the colorful coat there.

24 THE COURT: Brown. With an Afro.

25 THE WITNESS: Afro.

26 THE COURT: Who's he, that's number six.

27

1 THE WITNESS: This is number six.

2 THE COURT: Will you stand up?

3 MR. APPLEBY: Identifying the defendant Kirby.

4 THE COURT: Allright, sit down, Mr. Kirby. What's the next one?

5 THE WITNESS: The other young man in the overall jacket.

6 THE COURT: Right next to him. Stand up. What number is he,
7 number 18?

8 THE WITNESS: He's number 18.

9 THE COURT: What's his name?

10 MR. APPLEBY: Defendant Singleton, your Honor.

11 THE COURT: Thank you very much, Mr. Singleton.

12 MR. APPLEBY: No further questions.

13 THE COURT: Allright.

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APPENDIX

Testimony from page 66

1 Cross-Attmore

2 The Court: And this other car was parallel?

3 The Witness: Paralell and so close that you couldn't walk
4 between the two.

5 The Court: Gee, so close? (indicating)

6 Testmony from page 110
7 Brief page 4

8 Attmore-Direct

9 The Court: You had better step foward. Can you see him,
10 which one was in the driver's seat?

11 The Witness: The young man in the overall type outfit.

12 Testimony from page 111
13 Brief page 4

14 Attmore-Direct

15 The Court: Did you see the passanger at the same time
16 Mr. Attmore?

17 The Witness: Yes your Honor.

18 The Court: Who is he?

19 The Witness: The young man seated there (indicating).

20 The Court: W ould you stand up Mr. Kirby? Is this the man?

21 The Witness: Yes, your Honor.

22 Testimony from page 114
23 Brief page 4

24 Attmore-Direct

25 Q. (From Mr. Appelby) Did you notice how tall he was and
26 how much he wieghed?

27 A. (From Mr. Attmore) Yes, I made a mental observation.
28 I would say he wieghed in between 175-180 pounds and that
29 his wieght was about 5'10 or 11.

1 Testmony from page 107-108
2 Brief page 5

3 Direct-Attmore

4 The Witness: And I completed the route which was the second
loop.

5 Q. What did you do at this point where your pointer
6 is pointing at?

7 A. At this point I made it my business to---

8 Q. Did you go to a specific house at this point?

9 A. Yes, there is a house with a very large yard
which would afford me a good vantage point because the fence
is a low type fence---

10 Testimony from page 114
11 Brief page 5

12 Direct Attmore

13 Q. Then what did you do?

14 A. Well, I continued north on 146th Street and
15 completed my loop, which brought me back to my jeep, the
rear of my jeep in this case.

16 Q. How long did it take you to return to the rear
17 of your jeep?

18 A. About four minutes.

19 Testimony from pafe 116
Brief page 5

20 Direct-Attmore

21 Q. Do you recall what the license plate number is?

22 A. Yes, I do

23 Q. What is it?

24 A. 336 QFZ

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1 Testimony from page 126
2 Brief page 5

3 Attmore-Direct

4 Q. Did there come a time when you returned to your jeep
5 after completing this loop?

6 A. Yes.

7 Q. And when you returned did you see the Ford Falcon?

8 A. It was no longer in sight.

9 Testimony from page 133-134
10 Brief page 5

11 Attmore-Direct

12 Q. Can you tell us approximately what time you made the
13 call?

14 A. I knew the exact time.

15 Q. How did you know that?

16 A. The first thing I did was look on the clock on the wall.

17 Q. What time was it..

18 A. 12:40

19 Q. Without telling us what Mr. Carter said to you, what
20 did you say to him?

21 A. I reported that the jeep had been broken into; told him
22 of the missing mail and of the mail that I had left and
23 asked him if he would please make this report to the Postal
24 Inspector and told him where he might be able to find me.

25 Testimony from page 135
26 Brief page 5

27 Attmore-Direct

28 Q. Did you give him any information?

29 A. Yes. I gave the information that I had written down
30 concerning the vehicle which was located paralell to my
31 jeep and I made an observation.

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2 Q. Would you tell us what that observation was?

3 A. The observation was this: as I went to give him the
4 information I noticed on his clipboard that he had the same
license plate number already written down.

5 Testimony from page 285
6 Rinzulli-Direct:

7 Q. Without telling us what inspection Shovlin said, based
upon Inspector O'Niel's conversation with him, what did
8 you do?

9 A. We then proceeded to the vicinity of 120th Avenue and
Sutphin Blvd.

10 The Court: 120th Avenue?

11 The Witness: Yes sir.

12 The Court: All right.

13 Testimony from page 294
14 Brief page 6

15 Rinzulli-Direct

16 Q. How did you identify yourselves?

17 A. I states, Federal Police Officers, Postal Inspectors,
and order the individuals out of the car.

18 Q. Where was Inspector O'Niel when you were doing this?

19 A. Inspector O'Niel was just getting out his drivers side
of the vehicle.

20 Q. Had he actually gotten out of the car at that point?

21 A. I really don't remember.

22 Q. Where was Inspector Cole at this point?

23 A. Inspector Cole was standing right next to me.

24 Q. What was he doing?

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2 A. He was standing on my left, assisting me in getting
the two individuals out of the vehicle.

3 The Court: Assisting you do what?

4 The Witness: Getting the two individuals out of the vehicle.

5 The Court: What do you mean by that?

6 The Witness: I mean he was there lending his assistance
if it was necessary.

7 The Court: Didn't they get out?

8 The Witness: They came out, yes, your Honor.

9
10 Testimony from page 297
Brie f page 6

11 Rinzulli-Direct

12 Q. After you brought these individuals to the side of
the building did you tell the anything?

13 A. As I was patting down these individuals for weapons, I
14 already advised both of them of their Constitutional rights or
what is commonly known as Miranda warnings.

15
16 Testmonv from page 302
Brief page 6

17 Rinzulli-Direct

18 Q. Inspector Rinzull, can you identify Government's Exhibit
19 number 7for identification?

20 The Court: Is that the jacket that came flying out, as you
say, the side of the car, and landed on the sidewalk?

21 The Witness: Yes sir, it is.

22 Testimony from page 314
23 Brief page 6
Rinzulli-Direct

24 Q. Did there come a time when you escorted the defendants
25 back to the Postal Inspectors Office?

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APPENDIX B

1 APPENDIX B
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THE COURT: We have to stop sometime.

MR. MALTZ: We have three defendants.

THE COURT: We have already spent quite a bit of time

7 MR. MALTZ: With all due respect your Honor this is cross-examination.

THE COURT: You are not going to expend this entire afternoon

9 MR. MALTZ: No, I am not. I promise

10 THE COURT: You had better get that straight.

11 MR. MALTZ: However, after discussion with my colleagues
12 we would like to perhaps find areas of mutuality.

THE COURT: Mr. Kelly will be here.

MR. MALTZ: He may not necessarily be in the same position.

THE COURT: You can do it now, can't you?

16 MR. MALTZ: I am not sure. I would like to discuss it with my colleagues if I may.

17 THE COURT: Talk to them now. I will stay here, and the jury
18 will stay here. You can go out in the hall. Time is of
19 the essence here. We cannot prolong this in this way.
Go out in the hall with Mr. Bloom and Mr. Kelly.

(Mr. Bloom, Mr. Maltz, and Mr. Kelly retired from the courtroom)

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1 A. Yes.

2 Q. Where is this?

3 A. In Jamaica.

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APPENDIX C

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3 Testimony from page 319

4 Rinzulli-Direct

5 The Court: You have the same point over and over again,
6 and you will get the same ruling over and over again.
I don't understand why you persist and take time.
7 The same with your cross examination, you don't take no
for an answer.

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~~James J. Hoffa~~

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